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8 YZ Productions, Inc.  
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12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14

15 YZ PRODUCTIONS, INC., a California  
16 corporation,

17 Plaintiff,

18 v.

19 SPREADSHIRT, INC., a Delaware  
20 corporation,

21 Defendant.  
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Case No. 2:22-cv-04293

**COMPLAINT FOR:**

**TRADEMARK  
COUNTERFEITING, TRADEMARK  
INFRINGEMENT AND FALSE  
DESIGNATION OF ORIGIN,  
TRADEMARK DILUTION, AND  
COPYRIGHT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff YZ Productions, Inc. (“Plaintiff” or “YZ”) hereby complains of Spreadshirt,  
2 Inc. (“Defendant”), and alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an action for (1) direct and contributory trademark counterfeiting under  
5 15 U.S.C. §1114, (2) direct and contributory trademark infringement under 15 U.S.C.  
6 §1114, (3) direct and contributory trademark infringement, and false designation of origin  
7 under 15 U.S.C. §1125(a); (4) direct and contributory trademark dilution under 15 U.S.C.  
8 §1125(c); and (5) direct, contributory, and vicarious copyright infringement under 17  
9 U.S.C. §501 *et seq.*

10 2. The Court has original subject matter jurisdiction over the claims that relate  
11 to trademark counterfeiting, trademark infringement, false designation of origin, and  
12 trademark dilution pursuant to 15 U.S.C. §§ 1116 and/or 1121(a) and has original subject  
13 matter jurisdiction over the copyright infringement claim under 17 U.S.C. §§ 501 *et seq.*  
14 The Court also has original subject matter jurisdiction over those claims pursuant to 28  
15 U.S.C. §§ 1331 and 1338, as the claims arise under the laws of the United States. The Court  
16 has supplemental jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367(a) over the claims  
17 which arise under state statutory and common law, because the state law claims are so  
18 related to the federal claims that they form part of the same case or controversy and derive  
19 from a common nucleus of operative facts.

20 3. This Court has personal jurisdiction over Defendant because it has a  
21 continuous, systematic, and substantial presence within California, including within this  
22 Judicial District. Defendant regularly conducts business within California, including in this  
23 Judicial District. In addition, Defendant has committed acts of trademark counterfeiting,  
24 trademark infringement, false designation of origin, trademark dilution, and copyright  
25 infringement in California and in this Judicial District, including, but not limited to,  
26 counterfeiting, and using infringing marks, and designs in connection with the sale and  
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1 offering for sale of products to customers in California and in this Judicial District, and  
2 Defendant's acts form a substantial part of the events or omissions giving rise to Plaintiff's  
3 claims.

4 4. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) at  
5 least because a substantial portion of the events complained of herein took place in this  
6 Judicial District.

### 7 **THE PARTIES**

8 5. YZ is a corporation organized and existing under the laws of the State of  
9 California, having a principal place of business at 16000 Ventura Blvd, Suite 520, Encino,  
10 CA 91436, in Los Angeles County.

11 6. Upon information and belief, Spreadshirt, Inc. is a Delaware corporation,  
12 having a principal place of business at 1572 Roseytown Road, Greensburg, PA 15601.

### 13 **COMMON ALLEGATIONS FOR ALL CLAIMS OF RELIEF**

#### 14 **YZ and Its Intellectual Property**

15 7. YZ is a professional multimedia production company, YouTube channel  
16 operator, and distributor engaged in the production, design, creation, distribution and sale  
17 of multimedia content.

18 8. YZ's numerous YouTube channels contain a library of thousands of original  
19 videos and currently has more than Twenty-Five Million (25,000,000) subscribers.

20 9. YZ's numerous social media channels (i.e., Instagram, Facebook, TikTok)  
21 also has multiple millions of subscribers and followers.

22 10. Since at least as early as January 1, 2016, YZ has used REBECCA ZAMOLO  
23 as a trademark in U.S. commerce in connection with multimedia content (i.e., YouTube  
24 videos), social media channels, consumer products, and clothing (collectively, the  
25 "REBECCA ZAMOLO Goods").

26 11. The REBECCA ZAMOLO trademark was registered with the U.S. Patent and  
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Trademark Office on June 30, 2020 as Registration No. 6,090,463.

12. YZ is the owner of all right, title and interest in and to the trademark REBECCA ZAMOLO (the “REBECCA ZAMOLO Trademark”) for the REBECCA ZAMOLO Goods.

13. YZ is the owner of the following federal trademark registrations for the REBECCA ZAMOLO Trademark and owns all right, title and interest in and to the subject marks thereof and all goodwill associated therewith:

<u>MARK</u>	<u>REG. NO</u>	<u>GOODS/SERVICES</u>
REBECCA ZAMOLO	6,090,463	<p>Class 3: Cosmetics; Cosmetics for children.</p> <p>Class 16: Stickers and transfers; Blank journal books; Blank journals; Blank writing journals; Personalized writing journals; Printed materials, namely, blank journals.</p> <p>Class 25: Hats; Hoodies; Shirts; Tops as clothing; Sweat shirts; T-shirts.</p> <p>Class 41: On-line video journals, namely, vlogs featuring nondownloadable videos in the field of current events, humor, and popular culture; Production of humorous videos for the Internet; Production of musical videos.</p>

14. Attached hereto as Exhibit A is a true and correct copy of YZ’s Trademark Registration Certificate.

15. YZ is the author of an original work of art titled “RZ Cupcake Pink/Teal” (the “RZ Cupcake Artwork”).

16. Since at least as early as January 1, 2018, YZ has used the RZ Cupcake Artwork on consumer products and clothing (collectively, the “RZ Cupcake Goods”).



1 17. YZ is the owner of all right, title and interest in and to the copyright (“RZ  
2 Cupcake Copyright”) for the RZ Cupcake Goods.

3 18. The RZ Cupcake Artwork has been registered with the U.S. Copyright Office  
4 since November 21, 2019 as Registration No. VA0002188615. Attached hereto as Exhibit  
5 B is a true and correct copy of YZ’s Copyright Registration Certificate.

6 19. As a result of YZ’s substantial and continuous use of the REBECCA  
7 ZAMOLO Trademark and RZ Cupcake Artwork, YZ is the owner of strong common law  
8 rights in the mark.

9 20. YZ has and continues to widely market and promote the REBECCA  
10 ZAMOLO Trademark and RZ Cupcake Artwork by displaying the marks and images on  
11 millions of YouTube videos and clothing articles watched and sold in the U.S. The  
12 REBECCA ZAMOLO Goods have achieved substantial commercial success.

13 21. The REBECCA ZAMOLO Trademark and RZ Cupcake Artwork are the  
14 subject of substantial and continuous marketing, promotion and sales by YZ.

15 22. YZ’s promotional efforts for the REBECCA ZAMOLO Trademark and RZ  
16 Cupcake Artwork include – by way of example but not limitation – displaying the marks  
17 on or in connection with YZ’s online ecommerce store, promotional and point-of-sale  
18 materials, YZ’s websites and other Internet websites, YZ’s published books, YZ’s  
19 published gaming app, and YZ’s social media accounts.

20 23. As a result of YZ’s substantial use and promotion of the REBECCA  
21 ZAMOLO Trademark and RZ Cupcake Artwork, the marks and images have acquired  
22 great value as specific identifiers of YZ’s products and serve to identify and distinguish  
23 YZ’s products from those of others.

24 24. Customers in this Judicial District and elsewhere readily recognize the  
25 REBECCA ZAMOLO Trademark as distinctive designations of the origin of YZ’s  
26 REBECCA ZAMOLO brands of entertainment and other products and services.

1           25. The REBECCA ZAMOLO Trademark and RZ Cupcake Artwork are  
2 intellectual property assets of enormous value as symbols of YZ and its quality products,  
3 reputation, and goodwill.

4                           **Defendant's Infringing Activities**

5           26. Without permission or consent from YZ, Defendant has marketed, offered for  
6 sale, sold, created, caused to be manufactured, and/or shipped to consumers unauthorized  
7 goods bearing counterfeit and infringing marks and designs that are identical to or  
8 substantially similar to the REBECCA ZAMOLO Trademark and RZ Cupcake Artwork.

9           27. Upon information and belief, Defendant owns and operates an ecommerce  
10 system through which infringing and counterfeit apparel and other goods displaying the  
11 REBECCA ZAMOLO Trademark and RZ Cupcake Artwork, and/or confusingly marks  
12 and substantially similar designs (hereinafter, "Infringing Goods") are marketed, offered  
13 for sale, sold, created, manufactured, and/or shipped to consumers by Defendant, all  
14 without permission or authorization from YZ.

15           28. Upon information and belief, Defendant is directly involved in the sale of  
16 goods via its e-commerce system and has direct control over and specific knowledge of the  
17 Infringing Goods advertised or sold via that system. For instance, YZ informed Defendant  
18 on April 30, 2020, that the REBECCA ZAMOLO Trademark and RZ Cupcake Artwork  
19 were featured on several Infringing Goods displayed on Defendant's ecommerce website.  
20 *See* Exhibit C, attached hereto. In that communication, YZ provided Defendants with links  
21 to specific Infringing Goods for sale, as well as screen shots of the listings for the Infringing  
22 Goods. *Id.* By listing the Infringing Products, Defendant provides all of the necessary tools  
23 for users to create online storefronts through which Infringing Goods are then marketed,  
24 offered for sale, and sold.

25           29. Defendant's online storefronts are integrated into its website,  
26 www.spreadshirt.com. Defendant provides technical, logistical, and other support for those  
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1 storefronts. Defendant processes retail transactions for the sale of the goods, creates or  
2 directs the creation of the Infringing Goods, and handles shipment of the goods. In addition,  
3 Defendant has supervisory power over users of its e-commerce system because, for  
4 example, Defendant can remove products from its e-commerce system and even suspend  
5 or terminate users' storefronts.

6 30. Defendant has offered for sale, sold, and/or shipped Infringing Goods to  
7 customers in California, including to customers in this Judicial District. Upon information  
8 and belief, Defendant also has made or directed the manufacture of those goods in this  
9 Judicial District.

10 31. Defendant has directly profited from the sale of Infringing Goods through its  
11 e-commerce system. Defendant has a direct financial interest in the sale of those Infringing  
12 Goods because Defendant receives a portion of each sale made through its e-commerce  
13 system.

14 32. Some examples of Infringing Goods displaying the REBECCA ZAMOLO  
15 Trademark and RZ Cupcake Artwork offered for sale and sold on Defendant's website are  
16 shown below:

Matt slays shit 3 Adjustable Contrast Face Mask (Large) | Spreadshirt

<https://www.spreadshirt.com/shop/design/matt+shays+shirt+3+amcs+oversize+-shirt-D6087eb36363c621953b6fa?sellerid=nOrnyZaj1jSkJoMrzCGr-1143-8> 1/5

<https://www.spreadshirt.com/shop/design/matt+slays+shirt+3+adjustable+contrast+face+mask+large-D60807eb36363e621953fb6a?callable=nOrmgZa1j1Skdo...> 1/5

'small plays shirt 3' Women's Knotted T-Shirt | Spreadshirt

<https://www.spreadshirt.com/shop/design/matt+slays+shirt+3+women+hoodie-D608f7eb3636c3e621953fb6a?sellable=nOrmgZa1j15&JoMrZGiv-405-23>

<https://www.spreadshirt.com/shop/design/mati+days+shirt+3+women+sknotted+shirt-D608f7eb3636c3e621953f16a7ac1abdc=nOrmgZa1j1SkJeMwZGv-1404-8>

4/21/22, 5:50 PM

'matt slays shirt 3' Beanie | Spreadshirt

**Beanie**matt slays shirt 3  
by 305501822
<https://www.spreadshirt.com/shop/design/matt-slays-shirt-3-beanie-D6087eb3636c3eb21953b6a7e0d0a7a1jJSkJoMazZGv-1089-36>

4/21/22, 5:47 PM

'matt slays shirt 3' Computer Backpack | Spreadshirt

**Backpack**matt slays shirt 3  
by 305501822

1/5

<https://www.spreadshirt.com/shop/design/matt-slays-shirt-3-caravan-backpack-D6087eb3636c3eb21953b6a7e0d0a7a1jJSkJoMazZGv-1157-33>

1/5

4/21/22, 5:40 PM

'matt slays shirt 3' Men's 50/50 T-Shirt | Spreadshirt

**Men's 50/50 T-Shirt**

★★★★★ 4.4 (238 reviews)

matt slays shirt 3

by 305501822


<https://www.spreadshirt.com/shop/design/matt-slays-shirt-3-mens-5050-t-shirt-D6087eb3636c3eb21953b6a7e0d0a7a1jJSkJoMazZGv-1197-7>

1/5

4/21/22, 5:41 PM

'matt slays shirt 3' Men's Longsleeve Shirt | Spreadshirt

**Men's Longsleeve Shirt**

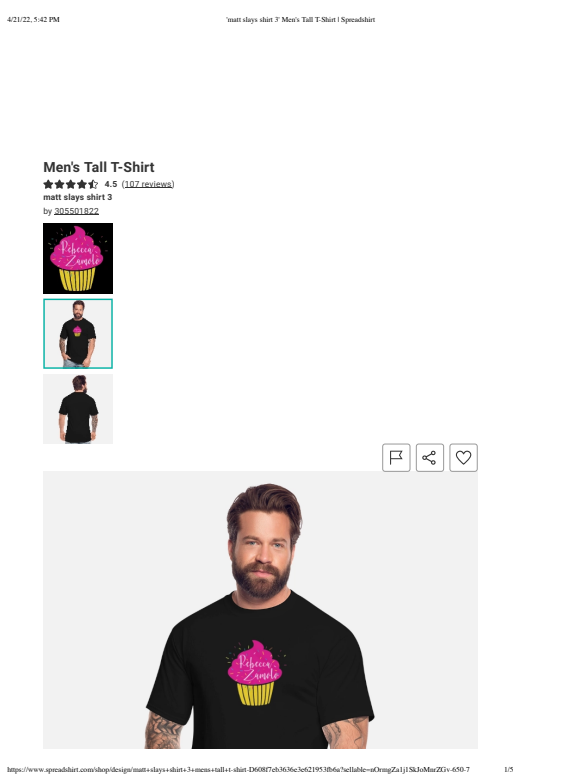
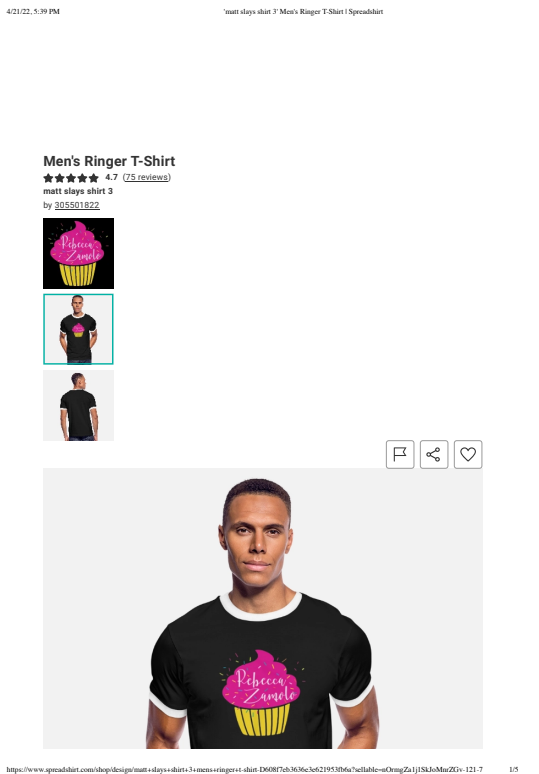
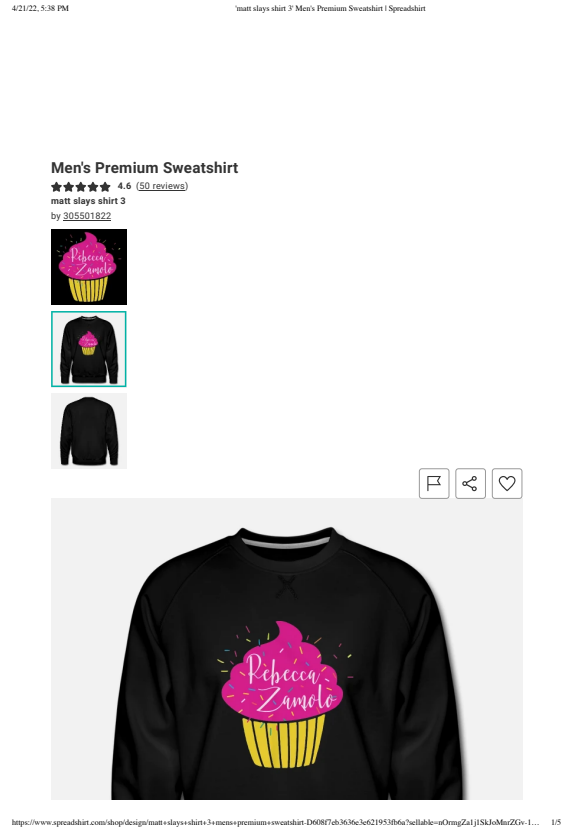
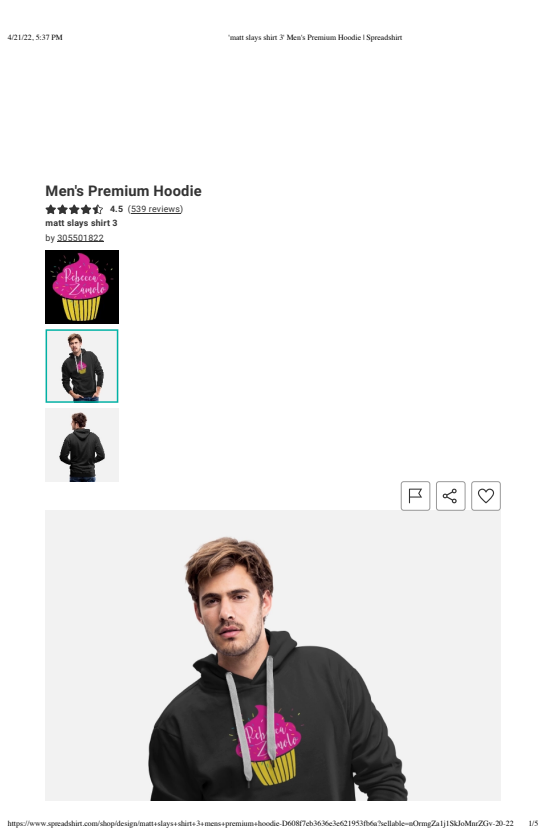
★★★★★ 4.5 (256 reviews)

matt slays shirt 3

by 305501822


<https://www.spreadshirt.com/shop/design/matt-slays-shirt-3-mens-longsleeve-shirt-D6087eb3636c3eb21953b6a7e0d0a7a1jJSkJoMazZGv-23-18>

1/5





4/21/22, 5:45 PM

'matt slays shirt 3' Unisex Shawl Collar Hoodie | Spreadshirt

**Unisex Shawl Collar Hoodie**

★★★★★ 4.6 (41 reviews)

matt slays shirt 3

by 305501822

<https://www.spreadshirt.com/shop/designs/matt-slays-shirt-3-unisex-shawl-collar-hoodie-D6087cb36cb621953b6a7e6fbb6e-e0mgZajj1SkhMaZGZc...> 1/5

4/21/22, 5:44 PM

'matt slays shirt 3' Unisex Super Soft T-Shirt | Spreadshirt

**Unisex Super Soft T-Shirt**

★★★★★ 4.2 (22 reviews)

matt slays shirt 3

by 305501822

<https://www.spreadshirt.com/shop/designs/matt-slays-shirt-3-unisex-super-soft-t-shirt-D6087cb36cb621953b6a7e6fbb6e-e0mgZajj1SkhMaZGZc...> 1/5

4/21/22, 5:41 PM

'matt slays shirt 3' Unisex Vintage Sport T-Shirt | Spreadshirt

**Unisex Vintage Sport T-Shirt**

★★★★★ 4.7 (20 reviews)

matt slays shirt 3

by 305501822

<https://www.spreadshirt.com/shop/designs/matt-slays-shirt-3-unisex-vintage-sport-t-shirt-D6087cb36cb621953b6a7e6fbb6e-e0mgZajj1SkhMaZGZc...> 1/5

4/21/22, 5:36 PM

'matt slays shirt 3' Women's Cropped Hoodie | Spreadshirt

**Women's Cropped Hoodie**

★★★★★ 4.4 (23 reviews)

matt slays shirt 3

by 305501822

<https://www.spreadshirt.com/shop/designs/matt-slays-shirt-3-womens-cropped-hoodie-D6087cb36cb621953b6a7e6fbb6e-e0mgZajj1SkhMaZGZc...> 1/5



4/21/22, 5:35 PM

'matt slays shirt 3' Women's Cropped T-Shirt | Spreadsheet

**Women's Cropped T-Shirt**

★★★★★ 4.6 (66 reviews)

matt slays shirt 3

by 305501822

<https://www.spreadshirt.com/shop/design/matt+slays+shirt+3+women+cropped+shirt-D608f7cb3636c3e621953b6a?cellable=ofOmngZaJj1SkJoMuzZGv-140...> 1/5

4/21/22, 5:36 PM

'matt slays shirt 3' Women's Hoodie | Spreadsheet

**Women's Hoodie**

★★★★★ 4.7 (271 reviews)

matt slays shirt 3

by 305501822

<https://www.spreadshirt.com/shop/design/matt+slays+shirt+3+women+hoodie-D608f7cb3636c3e621953b6a?cellable=ofOmngZaJj1SkJoMuzZGv-405-23> 1/5

4/21/22, 5:36 PM

'matt slays shirt 3' Women's Knotted T-Shirt | Spreadsheet

**Women's Knotted T-Shirt**

★★★★☆ 4.5 (25 reviews)

matt slays shirt 3

by 305501822

<https://www.spreadshirt.com/shop/design/matt+slays+shirt+3+women+knotted+shirt-D608f7cb3636c3e621953b6a?cellable=ofOmngZaJj1SkJoMuzZGv-1404-8> 1/5

4/21/22, 5:35 PM

'matt slays shirt 3' Women's Premium Slim Fit Sweatshirt | Spreadsheet

**Women's Premium Slim Fit Sweatshirt**

★★★★☆ 3.9 (16 reviews)

matt slays shirt 3

by 305501822

<https://www.spreadshirt.com/shop/design/matt+slays+shirt+3+women+premium+slim+fit+sweatshirt-D608f7cb3636c3e621953b6a?cellable=ofOmngZaJj1SkJoMuzZGv-405-23> 1/5

1           33. Upon information and belief, Defendant has specific knowledge of the  
2 Infringing Goods sold through its e-commerce system, including the goods shown in  
3 Paragraph 32 of this Complaint, at least because of Defendant's intimate involvement in  
4 the marketing, offering for sale, selling, producing, and/or shipping of the goods, and other  
5 customer support provided by Defendant relating to the goods.

6           34. Defendant is not affiliated with YZ. At no time has YZ ever given Defendant  
7 license, permission, or authority to use or display, reproduce, distribute or market the  
8 REBECCA ZAMOLO Trademark, RZ Cupcake Artwork or the YZ Goods.

9           35. Upon information and belief, Defendant knew of the REBECCA ZAMOLO  
10 Trademark and RZ Cupcake Artwork and YZ's rights therein when Defendant began  
11 marketing, offering for sale, selling, creating, and/or distributing Infringing Goods.

12           36. YZ notified Defendant of its infringement of the REBECCA ZAMOLO  
13 Trademark and RZ Cupcake Artwork, including in correspondence dated April 30, 2020  
14 ("First Demand Letter"), and demanded, in part, that Defendant stop its unlawful activities  
15 and provide an accounting of sales related to the Infringing Goods. *See* Exhibit C. In the  
16 First Demand Letter, YZ detailed specific instances of infringement, which included links  
17 and screenshots of the listings for Infringing Products. *Id.* Defendant removed the  
18 Infringing Goods, however Defendant did not provide any accounting of sales related to  
19 the Infringing Goods and failed to otherwise respond in any substantive way to the First  
20 Demand Letter.

21           37. During routine intellectual property review activities by YZ, it was discovered  
22 that Defendant thereafter re-commenced the marketing, offering for sale, selling, creating,  
23 directing manufacture, and/or distributing the Infringing Goods in blatant and willful  
24 disregard of YZ's valuable intellectual property rights, and contrary to the First Demand  
25 Letter.

26           38. YZ notified Defendant of its infringement again in correspondence dated  
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1 April 25, 2022 (“Second Demand Letter”) and again demanded that Defendant cease its  
2 unlawful activities and provide an accounting of sales related to the Infringing Goods. *See*  
3 Exhibit D.

4 39. Defendant removed the Infringing Goods, but again Defendant has refused to  
5 provide Plaintiff with any accounting of sales related to the Infringing Goods or otherwise  
6 provide any substantive response to the First Demand Letter or Second Demand Letter.

7 40. Defendant’s acts complained of herein have been willful and deliberate.  
8 Defendant has intentionally attempted to capitalize on YZ’s valuable reputation and  
9 customer goodwill in the REBECCA ZAMOLO Trademark by using marks and images  
10 that are the same or likely to cause confusion to the REBECCA ZAMOLO Trademark on  
11 or in connection with Infringing Goods.

12 41. Defendant’s actions alleged herein are intended to cause confusion, mistake,  
13 or deception as to the source of the products offered and sold through Defendant’s e-  
14 commerce system and are intended to cause consumers and potential customers to believe  
15 that the products are associated with YZ, when they are not.

16 42. By virtue of the acts complained of herein, Defendant has created a likelihood  
17 of injury to YZ’s business reputation and goodwill, caused a likelihood of consumer  
18 confusion, mistake, and deception as to the source of origin or relationship of YZ’s goods  
19 and the Infringing Goods sold through Defendant’s e-commerce system, and has otherwise  
20 competed unfairly with YZ by unlawfully trading on and using the REBECCA ZAMOLO  
21 Trademark and RZ Cupcake Artwork without YZ’s permission or consent.

22 43. Defendant’s acts complained of herein have caused damage to YZ in an  
23 amount to be determined at trial, and such damages will continue to increase unless  
24 Defendant is enjoined from its wrongful acts and infringement.

25 44. Defendant’s acts complained of herein have caused YZ to suffer irreparable  
26 injury to its business. YZ will suffer substantial loss of goodwill and reputation unless and  
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1 until Defendant is preliminarily and permanently enjoined from the wrongful acts  
2 complained of herein.

3  
4 **FIRST CLAIM FOR RELIEF**

5 (Trademark Counterfeiting Under 15 U.S.C. § 1114)

6 45. YZ incorporates by reference and realleges each of the allegations set forth in  
7 Paragraphs 1 – 44 of this Complaint as if set forth fully herein.

8 46. This is a claim for trademark counterfeiting arising under 15 U.S.C. § 1114.

9 47. Defendant has intentionally used in commerce, without permission from YZ,  
10 marks that are identical to or substantially indistinguishable from the REBECCA  
11 ZAMOLO Trademark that is the subject of YZ's U.S. Trademark Registration No.  
12 6,090,463, in connection with marketing, selling, offering for sale, manufacturing, and/or  
13 distributing Infringing Goods. Such use is likely to cause confusion, or to cause mistake,  
14 or to deceive.

15 48. YZ alleges that Defendant has used the non-genuine marks in connection with  
16 its business knowing that the marks are counterfeit. YZ is informed and believes, and on  
17 that basis alleges, that the activities of Defendant complained of herein constitute willful  
18 and intentional trademark counterfeiting, and Defendant acted with an intent to unfairly  
19 compete against YZ, to trade upon YZ's reputation and goodwill by causing confusion and  
20 mistake among customers and the public, and to deceive the public into believing that the  
21 Infringing Goods are associated with, sponsored by, or approved by YZ, when in fact they  
22 are not.

23 49. Defendant's use of the REBECCA ZAMOLO Trademark includes the sale of  
24 products in the same categories as those sold on Plaintiff's website,  
25 www.rebeccazamolo.com, and covered by YZ's U.S. Trademark Registration No.  
26 6,090,463.

1           50. Defendant is also contributorily liable for the counterfeiting acts of the users  
2 of Defendant's e-commerce system.

3           51. Defendant provides its e-commerce system to users knowing or having reason  
4 to know that the system is used to market, offer for sale, sell, create, and/or distribute goods  
5 displaying marks that are counterfeits of YZ's federally registered REBECCA ZAMOLO  
6 Trademark that is the subject of YZ's U.S. Trademark Registration No. 6,090,463.

7           52. For instance, YZ's First Demand Letter informed Defendant that Infringing  
8 Goods were listed on Defendant's website. However, Defendant continued to allow the  
9 Infringing Goods to be listed on its website. YZ subsequently discovered that such  
10 Infringing Goods were again listed on Defendant's website, and YZ's Second Demand  
11 Letter again informed Defendant that Infringing Goods were listed on Defendant's website.

12           53. Indeed, Defendant's allowance of Infringing Goods to be listed on its website  
13 before receiving the First Demand Letter and then takedown of Infringing Goods after  
14 receiving the First Demand Letter exhibits its direct control over, and monitoring of, the e-  
15 commerce system it provides to users. Defendant's allowance of Infringing Goods to be  
16 relisted on its website after receiving the First Demand Letter and then takedown of  
17 Infringing Goods after receiving the Second Demand Letter again exhibits its direct control  
18 over, and monitoring of, the e-commerce system it provides to users.

19           54. Based upon Defendant's actions, it is clear that Defendant knowingly and  
20 materially assists users with marketing, offering for sale, selling, creating, manufacturing,  
21 and/or distributing Infringing Goods. In addition, Defendant's actions show that it has  
22 supervisory power over users of its e-commerce system because, for example, Defendant  
23 can remove products from its e-commerce system and even suspend or terminate users'  
24 storefronts.

25           55. Based upon these allegations, Defendant had actual knowledge of YZ's  
26 ownership and prior use of the registered REBECCA ZAMOLO Trademark and without  
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1 the consent of YZ, has willfully and intentionally violated 15 U.S.C. § 1114. YZ is further  
2 informed and believes, and on that basis alleges, that this is an exceptional case within the  
3 meaning of 15 U.S.C. § 1117.

4 56. Defendant, by its actions, has irreparably injured YZ and damaged YZ in an  
5 amount to be determined at trial. Such irreparable injury will continue unless Defendant is  
6 preliminarily and permanently enjoined by this Court from further violation of YZ's rights,  
7 for which YZ has no adequate remedy at law.

## 8 9 **SECOND CLAIM FOR RELIEF**

10 (Trademark Infringement Under 15 U.S.C. § 1114)

11 57. YZ hereby repeats, realleges, and incorporates by reference Paragraphs 1 – 56  
12 of this Complaint as though fully set forth herein.

13 58. This is a claim for direct and contributory trademark infringement arising  
14 under 15 U.S.C. § 1114.

15 59. YZ owns a valid and enforceable federally registered trademark for the  
16 REBECCA ZAMOLO Trademark.

17 60. Defendant has directly infringed the federally registered REBECCA  
18 ZAMOLO Trademark by using the mark in commerce, without permission from YZ,  
19 colorable imitations, and/or confusingly similar marks to the REBECCA ZAMOLO  
20 Trademark.

21 61. Defendant use is seen in numerous ways. On their website, Defendant  
22 advertises the Infringing Goods that contain the REBECCA ZAMOLO Trademark and  
23 offers the Infringing Goods for sale. Defendant's product listing pages on its own website  
24 are advertisements of the Infringing Goods.

25 62. Further, Defendant offers to sell the Infringing Goods on its website by  
26 including details about the Infringing Goods for sale, such as the type of goods and details

1 about the goods.

2 63. Defendant then sells Infringing Goods that contain the REBECCA ZAMOLO  
3 Trademark to consumers by accepting money from consumers, directing the manufacture  
4 of the Infringing Goods, fulfilling orders, and shipping the Infringing Goods to consumers,  
5 thus forming a sales contract with consumers.

6 64. Defendant's use of the REBECCA ZAMOLO Trademark is shown by  
7 providing the platform for the Infringing Goods, processing orders for the Infringing Goods  
8 placed by consumers, arranging for the manufacture of the Infringing Goods, arranging for  
9 shipping of the Infringing Goods, controlling all customer service and return activities with  
10 the consumer, and pocketing a significant portion of the profits when consumers purchase  
11 the Infringing Goods from its website.

12 65. In addition, Defendant's use of the REBECCA ZAMOLO Trademark is likely  
13 to cause confusion amongst consumers as to the origin of the REBECCA ZAMOLO  
14 Trademark because Defendant sells the Infringing Goods bearing the REBECCA  
15 ZAMOLO Trademark in the same categories of goods as sold by Plaintiff on their website,  
16 www.rebeccazamolo.com.

17 66. Defendant has used the aforementioned marks in connection with marketing,  
18 selling, offering for sale, manufacturing, and/or distributing Infringing Goods. Such use is  
19 likely to cause confusion or mistake, or to deceive.

20 67. Defendant is also contributorily liable for the infringing acts of the users of  
21 Defendant's e-commerce system.

22 68. Defendant provides its e-commerce system to users knowing or having reason  
23 to know that the system is used to market, offer for sale, sell, create, and/or distribute  
24 Infringing Goods. For instance, YZ's First Demand Letter informed Defendant that  
25 Infringing Goods were listed on Defendant's website. Defendant's takedown of the  
26 Infringing Goods after receiving the First Demand Letter exhibits its direct control over,



1 and monitoring of, the e-commerce system it provides to users. However, Defendant  
2 allowed the Infringing Goods to be listed on its website again. Defendant's allowance of  
3 Infringing Goods to be relisted on its website after receiving the First Demand Letter and  
4 then takedown of Infringing Goods after receiving the Second Demand Letter again  
5 exhibits its direct control over, and monitoring of, the e-commerce system it provides to  
6 users.

7 69. Based upon Defendant's actions, it is clear that Defendant knowingly and  
8 materially assists users with marketing, offering for sale, selling, creating, manufacturing,  
9 and/or distributing Infringing Goods.

10 70. In addition, Defendant's actions show that it has supervisory power over users  
11 of its e-commerce system because, for example, Defendant can remove products from its  
12 e-commerce system and even suspend or terminate users' storefronts.

13 71. The activities of Defendant complained of herein constitute willful and  
14 intentional infringements of YZ's REBECCA ZAMOLO Trademark, and Defendant acted  
15 with the intent to trade upon YZ's reputation and goodwill by causing confusion and  
16 mistake among customers and the public and to deceive the public into believing that the  
17 Infringing Goods are associated with, sponsored by, originated from, or are approved by,  
18 YZ, when they are not.

19 72. Defendant had actual knowledge of YZ's ownership and prior use of the  
20 REBECCA ZAMOLO Trademark and willfully violated 15 U.S.C. § 1114.

21 73. Defendant, by its actions, has damaged YZ in an amount to be determined at  
22 trial.

23 74. Defendant, by its actions, has irreparably injured YZ. Such irreparable injury  
24 will continue unless Defendant is preliminarily and permanently enjoined by this Court  
25 from further violation of YZ's rights, for which YZ has no adequate remedy at law.



**THIRD CLAIM FOR RELIEF**

(Trademark Infringement and False Designation of Origin Under 15 U.S.C. § 1125(a))

75. YZ hereby repeats, realleges, and incorporates by reference Paragraphs 1 – 74 of this Complaint as though fully set forth herein.

76. This is an action for direct and contributory trademark infringement and false designation of origin arising under 15 U.S.C. § 1125(a).

77. As a result of the widespread use and promotion of the REBECCA ZAMOLO Trademark, the mark has acquired strong secondary meaning to consumers and potential customers, in that consumers and potential customers have come to associate the REBECCA ZAMOLO Trademark with YZ.

78. Defendant has directly infringed the REBECCA ZAMOLO Trademark and created a false designation of origin, by using in commerce, without YZ's permission, trademarks that are identical to and/or likely to cause confusion with the REBECCA ZAMOLO Trademark, in connection with marketing, offering for sale, selling, creating, and/or distributing Infringing Goods.

79. In addition, Defendant's use of the REBECCA ZAMOLO Trademark is likely to cause confusion amongst consumers as to the origin of the REBECCA ZAMOLO Trademark because Defendant sells the Infringing Goods bearing the REBECCA ZAMOLO Trademark in the same categories of goods as sold by Plaintiff on their website, [www.rebeccazamolo.com](http://www.rebeccazamolo.com).

80. Further, the REBECCA ZAMOLO Trademark and Defendant's Infringing Goods are not dictated by function, but instead are aesthetic designs and thus non-functional.

81. Defendant is also contributorily liable for the infringing acts of the users of Defendant's e-commerce system.

82. Defendant provides its e-commerce system to users knowing or having reason

1 to know that the system is used to market, offer for sale, sell, create, and/or distribute  
2 Infringing Goods.

3 83. Upon information and belief, Defendant has direct control over and monitors  
4 the e-commerce system it provides to users, and knowingly and materially assists users  
5 with marketing, offering for sale, selling, creating, manufacturing, and/or distributing  
6 Infringing Goods. In addition, Defendant has supervisory power over users of its e-  
7 commerce system because, for example, Defendant can remove products from its e-  
8 commerce system and even suspend or terminate users' storefronts.

9 84. Defendant's actions are likely to cause confusion and mistake, or to deceive  
10 as to the affiliation, connection, or association of YZ with Defendant, and/or as to the  
11 origin, sponsorship, or approval of Defendant's goods or Defendant's commercial  
12 activities, in violation of 15 U.S.C. § 1125(a).

13 85. Upon information and belief, the activities of Defendant complained of herein  
14 constitute willful and intentional infringements of the REBECCA ZAMOLO Trademark,  
15 Defendant acted with the intent to trade upon YZ's reputation and goodwill by causing  
16 confusion and mistake among customers and the public and to deceive the public into  
17 believing that the Infringing Goods are associated with, sponsored by or approved by YZ,  
18 when they are not.

19 86. Upon information and belief, Defendant had actual knowledge of YZ's  
20 ownership and prior use of the REBECCA ZAMOLO Trademark, without the consent of  
21 YZ, willfully violated 15 U.S.C. § 1125(a).

22 87. Defendant, by its actions, has damaged YZ in an amount to be determined at  
23 trial.

24 88. Defendant, by its actions, has irreparably injured YZ. Such irreparable injury  
25 will continue unless Defendant is preliminarily and permanently enjoined by this Court  
26 from further violation of YZ's rights, for which YZ has no adequate remedy at law.

**FOURTH CLAIM FOR RELIEF**

(Copyright Infringement Under 17 U.S.C. §§ 501 et seq.)

89. YZ hereby repeats, realleges, and incorporates by reference Paragraphs 1 – 88 of this Complaint as though fully set forth herein.

90. This is an action for direct, contributory, and vicarious copyright infringement under the Copyright Act, 17 U.S.C. §§ 501, et seq.

91. YZ is the owner of valid and enforceable copyright in the RZ Cupcake Artwork, which contains copyrightable subject matter under 17 U.S.C. §§ 101, et seq.

92. YZ has complied with the registration requirements of 17 U.S.C. § 411(a) for the RZ Cupcake Artwork, and has obtained Copyright Registration No. VA0002188615.

93. Defendant has unlawfully copied protected elements of the RZ Cupcake Artwork.

94. Upon information and belief, Defendant had access to the RZ Cupcake Artwork at least because YZ displays the RZ Cupcake Artwork on its clothing, accessories, websites, online ecommerce store, YouTube Channels, and social media pages. Defendant also had access to the RZ Cupcake Artwork because YZ previously notified Defendant of its infringement of those copyrighted designs in the First Demand Letter and Second Demand Letter.

95. Without permission from YZ, Defendant has directly infringed the RZ Cupcake Artwork by distributing, displaying, and reproducing identical and substantially similar designs bearing protected elements of the RZ Cupcake Artwork.

96. Defendant is also contributorily and vicariously liable for the acts of copyright infringement by users of Defendant's e-commerce system.

97. Defendant provides its e-commerce system to users knowing or having reason to know that the system is used to market, offer for sale, sell, create, manufacture, and/or distribute goods that infringes the RZ Cupcake Artwork.

1           98. Upon information and belief, Defendant has direct control over and monitors  
2 the e-commerce system it provides to users, and knowingly and substantially assists users  
3 with marketing, offering for sale, selling, creating, manufacturing, and/or distributing  
4 goods that infringe the RZ Cupcake Artwork.

5           99. Upon information and belief, Defendant has the right and ability to supervise  
6 its users' conduct on Defendant's e-commerce system, including, for example, because it  
7 can remove products from its e-commerce system and even suspend or terminate users'  
8 storefronts.

9           100. Defendant also profits directly from the sale of goods through its e-commerce  
10 system that infringe the RZ Cupcake Artwork because Defendant receives a portion of each  
11 sale.

12           101. Defendant's deliberate copying of the RZ Cupcake Artwork infringes and  
13 continues to infringe the RZ Cupcake Artwork in violation of 17 U.S.C. § 501(a).  
14 Defendant is directly infringing on YZ's exclusive right to reproduce copies, make  
15 derivative works, distribute copies, and display its RZ Cupcake Artwork under 17 U.S.C.  
16 §§ 106(1)–(3), (5).

17           102. Upon information and belief, Defendant's infringement has been willful and  
18 deliberate.

19           103. Defendant, by its actions, has damaged YZ in an amount to be determined at  
20 trial.

21           104. Defendant, by its actions, has irreparably injured YZ. Such irreparable injury  
22 will continue unless Defendant is preliminarily and permanently enjoined by this Court  
23 from further violation of YZ's rights, for which YZ has no adequate remedy at law.

24                           **PRAYER FOR RELIEF**

25           WHEREFORE, YZ prays for judgment against Defendant as follows:  
26  
27  
28

1           1.     That the Court render a final judgment in favor of YZ and against Defendant  
2 on all claims for relief alleged herein;

3           2.     That the Court render a final judgment that Defendant has violated the  
4 provisions of 15 U.S.C. § 1114 by directly and/or contributorily counterfeiting YZ's  
5 REBECCA ZAMOLO Trademark that is the subject of U.S. Trademark Registration Nos.  
6 6,090,463;

7           3.     That the Court render a final judgment that Defendant has violated the  
8 provisions of 15 U.S.C. § 1114 by directly and/or contributorily infringing YZ's registered  
9 trademarks, including at least the REBECCA ZAMOLO Trademark;

10          4.     That the Court render a final judgment that Defendant has violated the  
11 provisions of 15 U.S.C. § 1125(a) by willfully and directly and/or contributorily infringing  
12 the REBECCA ZAMOLO Trademark by using a false designation of origin, false  
13 description or false representation through the marketing, offering for sale, and sale of  
14 Infringing Goods offered through Defendant's e-commerce system;

15          5.     That the Court render a final judgment that Defendant has violated the  
16 provisions of 15 U.S.C. § 1125(c) by directly and/or contributorily diluting YZ's famous  
17 Marks;

18          6.     That the Court render a final judgment that Defendant has violated 17 U.S.C.  
19 § 501(a) by directly, contributorily, and/or vicariously infringing the RZ Cupcake Artwork  
20 (Reg. No. VA0002188615);

21          7.     That Defendant, its agents, servants, employees, attorneys, successors, and  
22 assigns, and all other persons in active concert or participation with Defendant who receive  
23 actual notice of the injunction by personal service or otherwise, be forthwith preliminarily  
24 and permanently enjoined from:

- 25               a.   using any of the REBECCA ZAMOLO Trademark and RZ Cupcake  
26               Artwork, in connection with Defendant's products or other products offered

1 for sale or sold through Defendant's e-commerce system, using any of the  
2 REBECCA ZAMOLO Trademark and RZ Cupcake Artwork in advertising  
3 or promoting Defendant's products or other products offered through  
4 Defendant's e-commerce system, and/or using confusingly similar  
5 variations of any of the REBECCA ZAMOLO Trademark and RZ Cupcake  
6 Artwork in any manner that is likely to create the impression that  
7 Defendant's products or other products offered through Defendant's e-  
8 commerce system originate from YZ, are endorsed by YZ, or are connected  
9 in any way with YZ;

- 10 b. manufacturing, distributing, shipping, importing, reproducing, displaying,  
11 advertising, marketing, promoting, transferring, selling, and/or offering to  
12 sell any unauthorized products bearing any of the REBECCA ZAMOLO  
13 Trademark and RZ Cupcake Artwork and/or any confusingly similar marks  
14 or images;
- 15 c. manufacturing, distributing, shipping, importing, reproducing, displaying,  
16 advertising, marketing, promoting, transferring, selling, and/or offering to  
17 sell any unauthorized products bearing or using the RZ Cupcake Artwork or  
18 any designs substantially similar thereto;
- 19 d. without permission or authorization from YZ, copying, reproducing,  
20 distributing, displaying, creating derivative works of the RZ Cupcake  
21 Artwork and/or importing, manufacturing, or producing any products  
22 bearing copies or derivative works of the RZ Cupcake Artwork;
- 23 e. filing any applications for registration of any trademarks, copyrighted  
24 works, or designs confusingly similar to the REBECCA ZAMOLO  
25 Trademark, and/or substantially similar to the RZ Cupcake Artwork;
- 26 f. otherwise infringing any of the REBECCA ZAMOLO Trademark and RZ

1 Cupcake Artwork or otherwise diluting the REBECCA ZAMOLO  
2 Trademark;

3 g. falsely designating the origin of Defendant's products in any manner  
4 suggesting that Defendant's products or other products offered for sale or  
5 sold through Defendant's e-commerce system originate from YZ; and

6 h. causing a likelihood of confusion or injury to YZ's business reputation;

7 8. That Defendant be directed to file with this Court and serve on YZ within  
8 thirty (30) days after the service of the injunction, a report, in writing, under oath, setting  
9 forth in detail the manner and form in which it has complied with the injunction pursuant  
10 to 15 U.S.C. § 1116;

11 9. That Defendant be required to account to YZ for any and all profits derived  
12 by Defendant and all damages sustained by YZ by virtue of Defendant's acts complained  
13 of herein;

14 10. That Defendant be ordered to pay over to YZ all damages which YZ has  
15 sustained as a consequence of the acts complained of herein, subject to proof at trial,  
16 together with prejudgment and post-judgment interest;

17 11. That, at YZ's election, Defendant be ordered to pay over to YZ statutory  
18 damages under 15 U.S.C. § 1117(c) of the statutory limit for the REBECCA ZAMOLO  
19 Trademark that Defendant has counterfeited;

20 12. That this case be deemed exceptional and the amount of the damages be  
21 trebled and that the amount of profits be increased by as many times as the Court deems  
22 appropriate, pursuant to 15 U.S.C. § 1117;

23 13. That YZ be awarded its damages and Defendant's profits under 17 U.S.C. §  
24 504, as well as enhanced damages pursuant to 17 U.S.C. § 504. Alternatively, if YZ elects,  
25 that YZ be awarded statutory damages pursuant to 17 U.S.C. § 504;

26 14. That Defendant's actions be deemed willful;

